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Draft Revisions to Chapter 50 10GCA-Guam Pesticide Act

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'50101. **Title and Purpose.** This Chapter may be cited as the Guam Pesticides Act and has the following purposes:

- (1) To regulate the importation, use and application of pesticides in the interest of the public interest;
- (2) To implement and enforce a comprehensive regulatory and enforcement program in the public interest, for the proper, safe, and efficient use of

pesticides and for the protection of human health and the environment, and to provide effective implementation and enforcement of such comprehensive programs;

- (3) To protect the consumer by requiring that pesticides sold in Guam be correctly labeled with warning and adequate directions for use;
- (4) To control, restrict, suspend or ban the importation, receipt, sale and the use of any pesticide or pesticide devices in the public interest ;
- (5) To protect, maintain, and improve the quality of Guam's environment and public health in the public interest;
- (6) To protect people and the environment from adverse effects of pesticides;
- (7) To prevent pesticide pollution of the ground waters and surface waters of Guam; and
- (8) To assure safe conditions for people in places where pesticides are present.

'50102. Definitions. As used in this Chapter unless the content clearly requires otherwise:

(1) *Active Ingredients* shall mean:

(a) In the case of a pesticide other than a plant growth regulator, defoliant or desiccant, an ingredient which will prevent, destroy, repel or mitigate any pest;

(b) In the case of a plant growth regulator, defoliant or desiccant, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof

(2) *Administrator* shall mean the Administrator of the Guam Environmental Protection Agency.

(3) *Adulterated* shall apply to any pesticide if its strength or purity falls below the professed standard of quality as expressed on its labeling under which it is sold, or if any substance has been substituted or abstracted wholly or in part for the pesticide, or any

valuable constituent of the pesticide has been wholly or in part abstracted.

(4) *Agency* shall mean the Guam Environmental Protection Agency.

(5) *Agriculture Commodity* shall mean any and all plant and animal produced in Guam for Commercial purposes.

(6) *Animal* shall mean all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish and shellfish.

(7) *Board* shall mean Board of Directors of the Guam Environmental Protection Agency.

(8) *Carrier* shall mean every description of craft, whether aircraft, surface craft or other contrivance used or capable of being used as a means of transportation in the air or water. The person responsible for the carrier shall be the owner, or his agent, including the operator having the command of the carrier.

(9) *Certified Pesticide Applicator* shall mean any individual who is certified under regulations promulgated under this chapter to use or to supervise the use of pesticides, and shall include, but not be limited to:

(a) *Private applicator* shall mean a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by the applicator or the applicator's employer or (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person.

- (b) **Commercial applicator shall mean an applicator (whether or not the applicator is a private applicator with respect to some uses) who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or on any property other than as provided in 8(a).**
- (c) **Agriculture Commodity Applicator shall mean an applicator who applies general use pesticides on any agricultural commodity.**
- (10) **CFR shall mean the Code of Federal Regulations.**
- (11) **Core Training shall mean the prerequisite training toward having a certified pesticide license for application of restricted use pesticides or for applying general use pesticides on any agriculture commodities.**
- (12) **Custom Officer shall mean the Chief of Customs under the Department of Commerce or his authorized representative.**
- (13) **Defoliant shall mean any substance or mixture of substances intended to cause the foliage to drop from a plant, with or without causing abscission.**
- (14) **Desiccant shall mean any substance or mixture of substances intended for artificially accelerating the drying of plant tissues.**
- (15) **Device shall mean any instrument or contrivance (other than a firearm) intended for trapping, destroying, repelling or mitigating pests or any other form of plant or animal life; but not including equipment used for the application of pesticides when sold separately.**
- (16) **Environment includes water, air, land and animals living therein, all plants and man and the interrelationships which exist among them.**
- ~~(17) EPA shall mean the United States Environmental Protection Agency.~~
- (17) **Experimental Use Permit shall mean a permit which is issued by the Administrator only for bona fide research programs under the super vision of public officials.**
- (18) **Facility shall mean a farm, building, room, nursery, golf course, landscaper, or any other type of location where pesticides are stored, are used, stored, sold or disposed of.**
- (19) **FIFRA shall mean the Federal Insecticide, Fungicide, and Rodenticide Act and its amendments.**
- (20) **Fungus shall mean all nonchlorophyll-bearing thallophytes including rusts, smuts, mildews, molds and yeasts, except those on or living in man or other animals and those on or in processed foods, beverages or pharmaceutical.**
- (21) **General Use Pesticide shall mean a pesticide other than one designated as restricted pesticide.**
- (22) **Imminent Hazard shall mean a situation which exists when the continued use of a pesticide during the time required for cancellation proceedings would likely result in unreasonable adverse effects on the environment, or would involve unreasonable hazards to the survival of a species declared endangered by the Secretary of the Interior under the Federal Endangered Species Act or the Endangered Species Act of Guam 5 GCA Chapter 63, Article 2, and their amendments.**
- (23) **Importer shall mean the person who initially receives incoming pesticides to Guam. ~~from an outside or foreign source other than the United States, its territories or possessions for the purpose of sale, distribution or use.~~**
- (24) **Importation shall mean importing or bringing of chemical pesticides or devices. ~~from an outside or foreign source other than the United States, its territories and possessions into Guam.~~**
- (25) **Inert Ingredient shall mean an ingredient which is not an active ingredient and as such does not act as a pesticide.**
- (26) **Ingredient Statement shall mean:**

(a) A statement of the chemical name and common name where applicable of each active ingredient, together with the name and percentage of each and the total percentage of inert ingredients, if any, in the pesticide;

(b) Whenever the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, each calculated as elementary arsenic.

(27) *Insect* shall mean invertebrate animals belonging to the class Insecta including beetles, bugs, bees, flies and other allied classes of arthropods, including spiders, mites, ticks, centipedes and wood lice.

(28) *Label* shall mean the written, printed or graphic matter on or attached to the pesticide or device, or any of its containers or wrappers. Labeling means all labels and other written, printed or graphic matter accompanying the pesticide or device at any time or to which reference is made on the label or in literature accompanying the pesticide or device, except for current official publications of the U.S. Environmental Protection Agency, United States Department of Agriculture, United States Department of Interior, United States Department of Health, Education and Welfare, state experiment stations, state or territorial agriculture colleges or other similar Federal, state or territorial institutions or agencies authorized by law to conduct research in the field of pesticides.

(29) *Misbranded* shall mean any pesticide or device if:

(a) Its labeling bears any statement, design or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

(b) It is contained in a package or other container or wrapping which does not conform to the standards established by the Board pursuant to this Chapter;

(c) It is an imitation of and is offered for sale under the name of another pesticide or device;

(d) Its labeling does not bear the Federal registration number;

(e) Any word, statement or other information required by or under this Chapter to appear on the labeling is not prominently placed thereon with such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(f) The labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 3(d) of this Act, is adequate to protect health and the environment;

(g) The label does not contain warning or caution statements which may be necessary and if complied with, together with any requirements imposed under '3(d) FIFRA is adequate to protect health and the environment;

(h) The label does not bear an ingredient statement on the immediate container;

(i) Any advertisement by means of news paper, leaflet, radio or television is false or misleading in any particular;

(j) In the case of a plant growth regulator, defoliant or desiccant when used as directed it is injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such pesticides; provided that physical or physiological effects on plants or parts thereof shall not be deemed to be injurious when this is the purpose for which the plant growth regulator, defoliant or desiccant was applied, in accordance with the label claims and recommendations.

(30) *Nematode* shall mean invertebrate animals of the Phylum Nemathelminthes and the class Nematoda including unsegmented round worms with elongated

fusiform or sac-like bodies covered with cuticle and inhabiting soil, water, plants or plant parts.

(31) *Notice of Arrival* shall mean a legal document authorized under '50118 for the purpose of collecting information concerning the importation and consignment of pesticides on Guam.

(32) *Person* shall mean any individual, partnership, co-partnership, firm, company, corporation, association, trust, estate, or any agency, department, instrumentality or the Federal or Local Government or any other legal entity, representative or any organized group or person whether incorporated or not.

(33) *Pest* shall mean any insect, rodent, nematode, fungus, weed or any other form of terrestrial or aquatic plant or animal life or virus, bacteria or other microorganism, except viruses, bacteria or other microorganisms on or in living man or other living animals which the Board declares to be a pest under this Chapter.

(34) *Pesticide* shall mean:

(a) Any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest;

(b) Any substances or mixture of substances intended for use as a plant growth regulator, defoliant or desiccant.

(35) *Plant Growth Regulator* shall mean any substance or mixture of substances intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof, but not including substances that are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants and soil amendments.

(36) *Produce* shall mean to manufacture, prepare, propagate, compound or process any pesticide, any active ingredient, or device or to package, repackage, label or relable or otherwise change the container of any pesticide or device.

(37) *Producer* shall mean any person who manufactures, prepares, compounds, propagates or processes any pesticide or device.

~~Produce shall mean to manufacture, prepare, compound, propagate or process any pesticide or device.~~

(38) *Producing Establishment* shall mean any place where a pesticide or device or active ingredient is produced; ~~used in producing a pesticide, or held for distribution or sale.~~

(39) *Protect Health and the Environment or Protection of Health and the Environment* shall mean protection against any injury to man and protection against any unreasonable adverse effects on the environment taking into account the public interest, including benefits from the use of the pesticide.

(40) *Registrant* shall mean a person who has registered any pesticide or device pursuant to this Chapter.

(41) *Restricted Pesticide* shall mean:

(a) A pesticide so designated by regulation under '3(d) of FIFRA and so designated on its label; or (b) A pesticide determined by the Board to be unsafe for use by persons other than a certified applicator, and so designated by inclusion on a list of restricted pesticides adopted by the Board.

(42) *Sell or Distribute* shall mean to distribute, solicit, sell, offer for sale, hold for sale, transport or deliver for transportation between points within Guam.

~~(43) Territory shall mean the territory of Guam.~~

(43) *"To Use Any Pesticide in a Manner Inconsistent with its Labeling"* shall mean to use any pesticide in a manner not permitted by the labelling.

(44) *USEPA* shall mean the United States Environmental Protection Agency

(45) *Under the Direct Supervision of a Certified Applicator* shall mean unless otherwise specified by its labeling, that the certified applicator is physically present at the time and place the pesticide is applied.

(46) *Unreasonable Adverse Effects on the Environment* shall mean any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide.

(47) *Use* shall mean mixing, loading, the application, and storage of pesticides, containers and devices, disposal of pesticides, devices, and or containers, and transportation of containers.

(48) *Weed* shall mean any plant which grows where not wanted.

'50103. Powers and Duties of the Agency and the Board.

The Agency shall be responsible for the implementation of the Chapter. All authority vested in the Board by virtue of this Chapter may with like force and effect be exercised by such employees of the Agency as the Board may from time to time designate for the purpose. The Board shall have the authority to:

- (a) Adopt, promulgate, amend, rescind, repeal rules and regulations, in accordance with the Administrative Adjudication Law:
 - (1) As may be necessary to implement and effectuate the provisions and regulations of this Chapter;
 - (2) As may be necessary to establish additional requirements which may be at least equivalent to, or more stringent or broader in scope than the requirements of the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA) and regulations promulgated pursuant to the FIFRA.
 - (3) Designate restricted pesticides;
 - (4) Suspend or ban certain pesticides or specific uses of certain pesticides;
 - (5) Require keeping of and access to records relating to importation, receipt, sell, production, use, storage, or disposal of pesticide and pesticide device;
- (b) Only after holding a public hearing, with at least 10 days prior to public notice:
 - (1) Declare as a pest any form of plant or animal life (other than bacteria, a virus and other microorganisms on or in living humans or living animals) which is injurious to health or the environment;
 - (2) Designate restricted pesticides or devices;
 - (3) Suspend or ban certain pesticides or specific uses of certain pesticides;
 - (4) The Agency shall promulgate rules and regulations regarding any action taken under this subsection within twelve (12) months of any action taken; and
 - (5) Revoke a permit, license, or certification.
 - (6) Require coloration of a pesticide and to exempt from coloration specific uses of certain pesticides.
- (c) Hold hearings related to any aspect of, or matter in the administration of, this Chapter, and in connection therewith, administer oaths, examine witnesses and issue subpoenas to compel the attendance of witnesses and the production of evidence;

- (d) Hear and decide appeals of orders issued by the Administrator.
- (e) Denial of any of a permit, license, registration, or certification.
- (f) To establish procedures, conditions, and fees for pesticide registration and permits, and for licenses and certification, under this Chapter.
- (g) To establish procedures and standards, and fees for the collection and examination of samples of pesticides or devices, for colouring of pesticides, and for storage and disposal.

'50104. Powers and Duties of the Administrator

All authority vested in the Administrator by virtue of this Chapter may with like force and effect be exercised by such employees of the Agency and the Administrator may from time to time designate for the purpose. The Administrator has the authority to:

- (a) Encourage voluntary cooperation by persons and affected groups to achieve the purposes of these Chapters;
- (b) Establish an effective enforcement program for the implementation of this Chapter;
- (c) In implementing the provisions of this Chapter, take actions necessary to protect human health, welfare, or the environment;
- (d) Issue, continue in effect, modify, revoke, reissue, or deny permits, license, certifications, or registrations;
- (e) Collect and disseminate information;
- (f) Conduct educational, certification, and training programs;
- (g) Refuse the importation of any pesticide or pesticide devices;
- (h) Issue letters of warning to violators as appropriate;
- (i) Issue, amend, rescind, and enforce orders as may be necessary to ensure compliance with any provision of this Chapter, or of any rules, regulations, license, certification, registration, standards, or requirements issued pursuant to this Chapter including, but not limited to, an administrative penalty order, "not limited to" an emergency order, an administrative penalty or order requiring whatever remedial measures may be necessary or appropriate to implement or effectuate the provisions and purposes of this Chapter;
- (j) Hold Hearing related to any aspect of, or matter in the administration of, this Chapter, and in connection therewith, administer oath, examine witness and issue subpoenas to compel the attendance of witnesses and the production of evidence;
- (k) Seize certain pesticides, pesticide device, or specific uses of certain pesticides;
- (l) Suspend certain pesticides or specific uses of certain pesticides;
- (m) Consult, upon request, with any person proposing to import, distribute, produce, or manufacture any pesticide or pesticide devices. Nothing in any consultation shall be construed to relieve any person from compliance with this Chapter, or any other provision of the law;
- (n) Accept, receive, and administer grants and other funds or fees from public and private agencies, including the federal government, for

- carrying out any of the purposes of this Chapter;
- (o) Cooperate with or enter into agreements with any person for purposes of implementing the provisions of this Chapter.

'50105. Experimental Use Permits.

- (a) Issuance. Any person may apply to the Administrator for an experimental use permit for a pesticide. The Administrator may issue an experimental use permit if he determines that the applicant needs such permit in order to accumulate information necessary to register a pesticide under FIFRA or under this Chapter. An application for an experimental use permit may be filed at the time of or before or after an application for registration is filed.
- (b) Temporary Tolerance Level. If the Administrator determines that the use of a pesticide may reasonably be expected to result in any residue on or in food or feed, he may establish a temporary tolerance level for the residue of the pesticide before issuing the experimental use permit;
- (c) Use under Permit. Use of a pesticide under an experimental use;
- (d) Permit shall be under the supervision of the Administrator, and shall be subject to such terms and conditions and be for such period of time as the Administrator may prescribe in the permit, **including but not limited to conditions that require the permittee to obtain written permission of the property owner and the substantial participation in the experimental use by an experienced pesticide researcher approved by the Administrator. All costs involve with the permit process shall be the responsibility of the permittee.**
- (e) Studies. When any experimental use permit is issued for a pesticide containing any chemical or combination of chemicals which has not been included in any previously registered pesticide, the Administrator may specify that studies be conducted to detect whether the use of the pesticide under the permit may cause unreasonable adverse effects on the environment. All results of such studies shall be reported to the Administrator before such pesticide may be registered under this Chapter; and
- (f) Revocation. The Administrator may revoke any experimental use permit, at any time, if he finds that its terms or conditions are being violated, or that its terms or conditions are inadequate to avoid unreasonable adverse effects on the environment.

'50106. Local Special Need Registration

- (a) Any federally registered pesticide, for which the Administrator has determined has an additional use which meets special local needs in accordance with FIFRA, maybe registered with the administrator; provided that the federal registration for the pesticide or the device has not previously been denied, suspended, disapproved, or cancelled by the Administrator of USEPA.
- (b) The Administrator, whenever he deems it necessary in the administration of this part, may require the submission of the complete formula of any pesticide.

- (c) If it appears to the administrator that the composition of the article and its labeling and other material required to be submitted comply with the requirements of this Chapter and '24 (c) of FIFRA, he may register the article.
- (d) Any person who applies for a Special Local Need Registration shall pay all costs relating to the agency's review thereof.

'50107 Refusal, Cancellation or Suspension of Registration [Repealed]

'50108. Licensing, Importation, Certification, Sale of Restricted Pesticides, Storage and Record keeping:

- (a) Every person who imports, sells or distributes restricted pesticides shall obtain an annual license from the Agency. Requirements, procedures and fees for licenses shall conform to the regulations promulgated under this Chapter and shall obtain a license or certification and such license shall be valid for at least three (3) years;
- (b) Any person issued a license, certification, or permit under the provisions of this Chapter shall be required by the Administrator to keep accurate records for a least two years from the date importation or sell and containing the following information:
 - (1) The delivery, movement, holding, or storage of any pesticide or device including quantity and name and registration number;
 - (2) The date received, name of consignor and consignee;
 - (3) Any other information necessary for the enforcement of this Chapter as prescribed by the Administrator;
 - (4) In the case of pesticide use, the name, registration number, quantity of pesticide and solution used.
- (c) The Administrator shall have access to such records at any reasonable time copy or make copies of such records for the purpose of carrying out the provisions of this Chapter. Unless required for the enforcement of this Act, such information shall be confidential and if summarized, shall not identify an individual person.
- (d) Every person who applies pesticides for commercial purposes shall obtain a license or certification from the Agency, which shall be valid for at least three years. Requirement procedures and fees for licenses or certification shall conform to the regulations promulgated under this Chapter, provided however, that any person who applies general use pesticides to agricultural commodities shall, at a minimum, complete the Core Class on pesticides and pass the examination before obtaining a license or certification from the Agency.
- f) Every person who imports pesticides into Guam must follow the requirements under Section 50109 and other related sections.

'50109. Denial, Suspension or Revocation of License [Repealed]

'50110. Labeling Requirements.

Each container of pesticides shall bear thereon or attached thereto in a conspicuous place, A plainly written or printed label in the English , or other languages as deemed necessary by the Administrator, providing all information required under FIFRA, applicable federal regulations, and required by US EPA including the following:

- (1) Name, brand or trademark under which the pesticide is sold or distributed;
- (2) Ingredient statement;

- (3) Direction for use which if complied with will adequately protect the health and environment;
- (4) Warning or caution statements as specified by regulation;
- (5) Weight or measure of content;
- (6) EPA registration number;
- (7) EPA establishment number; and
- (8) Classification statement.

'50111. Coloration of Certain Pesticides. (a) Pesticides known as standard lead arsenate, basic lead arsenate, sodium arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate or barium fluosilicate shall be distinctly colored as specified by regulation.

(b) **[Repealed]**

(c) **[Repealed]**

'50112. Prohibited Acts

- (a) Except as provided in this Chapter for Experimental Use Permits, **It shall be unlawful except as proscribed for any person to import, distribute, sell, and offer for sell in Guam:**
 - (1) Any pesticide or device which is not registered with USEPA or whose registration has been cancelled or suspended
 - (2) Any pesticide that is misbranded;
 - (3) Any pesticide that is not produced in an EPA registered pesticide producing establishment;
 - (4) Any registered pesticide if the composition differs from its registered composition at the time of its distribution or sale;
 - (5) Any registered pesticide if the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration under this Chapter or FIFRA;
 - (6) Any pesticide that is not in the producer's, re-filler's, registrant's, or the manufacturer's original unbroken immediate container;
 - (7) Any restricted pesticide dealer, wholesaler or retailer to expose or to offer for sale or to solicit or receive orders for the sale of restricted-use-pesticide unless the dealer, wholesaler or retailer has applied for and has obtained an annual license from the Agency pursuant to '50107;
 - (8) Any restricted pesticide to any person other than a certified pesticide applicator or licensed dealer;
 - (9) Any pesticide whose coloration is not in conformity with under this Chapter;
 - (10) Any pesticide which is adulterated or misbranded;
 - (11) Any pesticides in any manner that has been suspended or banned; or
 - (12) Except as provided in this Chapter for an Experimental Use Permit for Special Local Need Registration.
- (b) To use, apply, store, transport, mix, dispose, discard or supervise the use of an application of a pesticide or device

inconsistent with its labelling or restrictions imposed by the Administrator.

- (c) To use, store, transport, mix, dispose or discard any pesticide or the containers of any pesticide or device in any manner that could have adverse effects on the environment.
- (d) To use, store, transport, mix, dispose, discard or apply all pesticides or devices that is not registered with USEPA unless the pesticide is registered with the Administrator at the applicant's expense, or is permitted for experimental use under this Chapter.
- (e) To use, store, transport, mix, dispose or discard any pesticide or device which is under an experimental use permit inconsistent to the provision of such permit.
- (f) To use, store, transport, mix, dispose, discard or apply any restricted pesticide or device unless the person is a certified pesticide applicator or is acting under the immediate supervision and control of a current certified pesticide applicator with a valid certificate issued pursuant to regulations adopted under this Chapter.
- (g) To use, store, transport, mix, dispose, discard or apply any pesticide or device in any manner that has been suspended or banned pursuant to this Chapter or any pesticide whose registration has been cancelled or suspended by USEPA or the Agency.
- (h) To detach, alter, deface or destroy, in whole, or in part, any label or alter any labelling of the pesticide or device unless such action is taken with the approval of the Administrator to correct an improper label or labelling.
- (i) To add any substance to or take any substance from a pesticide or device in a manner that may defeat the purpose of this Chapter.
- (j) To use for a person's own advantage or to reveal any information relative to formulas of products acquired in the administration of this Chapter to persons other than to proper officials or Employees of the Agency, or any courts in response to a subpoena or to physicians or in emergencies to pharmacists and other qualified persons for use in the preparation of practical treatment.
- (k) To falsify any report or record required to be made or maintained or to fail to file reports required by the Agency.
- (l) To submit to the Agency data known to be false.
- (m) To violate any provision of this chapter or any rule, regulation, standard, permit, certificate, license or order issued pursuant to this Chapter.
- (n) Violate any rule, regulation, standard, or order issued or promulgated by USEPA under FIFRA.

- (o) To use, store, transport, mix, dispose or discard a pesticide in any way inconsistent with the Federal Worker Protection Standards (WPS) found at 40 CFR Part 170 and under this Chapter.

'50113 "Stop Sale", "Use", "Removal" and "Seizure"

(a) Whenever a pesticide or device is found by the Administrator or his designated agent and has reason to believe that a pesticide or device has been or is intended to be distributed or sold in violation under this Chapter:

(i) Issue a written or printed "stop sale, use or removal order;

(ii) The registration of the pesticide has been cancelled or suspended.

(b) Any pesticide or device seized hereunder shall, after entry of decree be disposed of by destruction or sale as the Court directs and proceeds, if sold, shall be paid to the Pesticide Control Management Fund ; provided that the pesticide or device shall not be sold contrary to the provisions of this Chapter, and provided that upon payment of costs and execution and delivery of a good and sufficient bond conditioned that the pesticide or device shall not be disposed of unlawfully, the Court may direct the pesticide or device to be delivered to the owner thereof.

(c) When a decree of condemnation is entered against the pesticide or device, court costs and fees, storage, and other proper expenses shall be awarded against the person, if any, intervening as claimant of the pesticide or device.

'50114. Banning of Pesticides.

The Board may ban the use of certain pesticides or specific uses of certain pesticides when such usage is deemed by the Agency or by USEPA to have unreasonable adverse effects on the environment or human health. The Administrator shall take necessary action to ban any pesticide or uses.

'50115. Rules and Regulations [Repealed]

'50116. Denial, Suspension or Revocation of Certificate [Repealed]

'50117. Cooperation [Repealed]

'50118. Notice of Arrival of Pesticides and Devices. An importer desiring to import pesticides or devices into Guam shall submit to the Administrator a completed Agency Notice of Arrival prior to the arrival of the shipment. Promptly after receipt, the Administrator shall complete said form, indicating the disposition to be made of the shipment of pesticides or devices upon its arrival in Guam and shall return the form to the importer or his agent.

'50119. Arrival of Pesticide and Devices. Upon arrival of a pesticide or device, the importer or his agent shall submit to the Customs Officer at the port of first arrival, the Notice of Arrival completed by the Administrator and indicating to Customs the action to be taken on the shipment of pesticides or devices. The

Customs Officer at the port shall compare the entry documents for the pesticide or device and certify their agreement with the Notice of Arrival.

'50120. Arrival of Pesticides and Devices without the Notice of Arrival.

When a pesticide or device arrives in Guam without the submission by the importer or his agent of the Notice of Arrival, they shall be refused entry by the Customs Officer. Any expenses incident to the handling, storage, or transfer of pesticides or devices refused entry into Guam shall be at the importer's or carrier's or risk and expense.

'50121. Release of Pesticides and Devices or Entry Refused. If the completed Notice of Arrival directs the Customs Officer to release the pesticides or devices and from examination if it appears to be in compliance, the pesticides or devices shall be released to the importer. If the completed Notice of Arrival directs the Customs Officer to refuse entry of a pesticides or devices or from examination of the pesticides or devices it appears to violate provisions of this Chapter such shipment shall be refused entry and shall be treated as a prohibited importation.

'50122. Authority to Inspect. (a) The Agency or any authorized representative or employee of the Agency may enter upon any public or private property, according to law

at any reasonable time to examine and inspect records, facilities, application methods and equipment, to examine and collect sample of plants, soil and other materials and to perform any other act for the purpose of carrying out and effectuating the purposes of this Chapter.

(b) Should entry be denied to any place where entry is sought, the Agency or any authorized representative or employee of the Agency may apply to any court of competent jurisdiction for a warrant authorizing entry. The court may, upon a showing that entry and inspection is necessary to verify that the purpose of this Chapter are being carried out and issue a warrant.

'50123. Penalties and Enforcement

(a) **Criminal Penalties.** Any person who knowingly violates any provision of this Chapter, or any valid rule or regulation promulgated under this Chapter, or who refuses or neglects to comply with any lawful license, certification, permit, registration, Notice of Arrival, or order issued by the Administrator in carrying out the provisions of this Chapter shall, upon conviction be guilty of a felony and sentenced to imprisonment for a term not to exceed five (5) years and be fined not more than ten thousand dollars (\$10,000.00) per day for each violation or non-compliance, and shall make restitution.

(b) **Civil Penalties.** Any person who violates any provision of this Chapter, or any valid rule or regulation promulgated under this Chapter, or refuses or neglects to comply with any lawful license, certification, permit, registration, Notice of Arrival, or order issued by the Administrator in carrying out the provisions of this Chapter shall in addition to clean-up cost and other damages, forfeit and pay a civil penalty of not more that ten thousand dollars (\$10,000.00) per day for each violation or non-compliance.

(c) **Administrative Penalties.** In addition to any other administrative or

judicial remedy provided this Chapter, or by rules adopted under this Chapter, the Administrator is authorized to impose by order the penalties specified in 50124(b). Factors to be considered in imposing an administrative penalty include the nature and history of the violation and of any prior violations, and the opportunity, difficulty, and history of corrective action. It is presumed that the violator's economic and financial conditions allow payment of the penalty, and the burden of proof to the contrary is on the violator. In any proceeding to recover the civil penalty imposed, the Administrator need only show that notice was given, a hearing was held or the time granted for requesting a hearing has expired without such a request, the civil penalty was imposed, and that the penalty remains unpaid.

- (d) The Agency may institute and maintain a judicial action to enforce the provisions of this Chapter, or any valid rule or regulation promulgated under this Chapter, or any lawful license, certification, permit, registration, Notice of Arrival, or order issued or order issued by the Administrator in carrying out the provision of their Chapter, by injunction, receivership or other appropriate remedy. The rights in section are in addition to any other rules or penalties conferred by this Chapter.
- (e) Nothing in this Chapter shall be construed to abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of any person to damage or other relief on account of injury to person or property and to maintain any action of other appropriate proceeding therefore.

'50124. Hearings.

- (a) Any person who receives an order from the Administrator as authorized by this Chapter and any person whose license, certification, permit, registration, Notice of Arrival, or order issued application is disapproved by the Administrator may, within fifteen (15) days of the date of receipt of such order or disapproval, file a Notice of Intent to appeal with the Board, setting forth in such Notice a verified petition outlining the legal and factual basis for such appeal.
- (b) The Board of Directors shall, not more that sixty (60) days after receipt of such Notice of Appeal, hold a public hearing at which time the person appealing may appear and present evidence in person or through counsel in support of this petition.
- (c) The Agency is hereby authorized to administer oaths, examine witnesses and issue subpoenas to compel the attendance of witnesses and the production of evidence relevant to the matter involved in the hearing.
- (d) The Board shall affirm, modify or revoke any action which is appealed and shall notify the appellant of its decision not more than thirty (30) days after the conclusion of the hearing. Such notice shall be in writing and shall state the reasons for the decision.
- (e) Any person may appeal such decision to the Superior Court of Guam by

filing with the Agency a written notice of such intent to appeal with ten (10) days of the notice in subsection (d) of the Section and shall have a transcript of the proceedings upon request and payment of the expenses of preparation and certification of the transcript, and filling out a petition with the Superior Court of Guam within thirty (30) days of the Notice in subsection (d) of this section.

'50125. Pesticide Management Fund

There is established a non-lapsing, revolving fund, hereafter referred to as the "Pesticide Management Fund" which shall be maintained separate and apart from any other funds of the Government of Guam, and shall be administered by the Administrator. Independent records and accounts shall be maintained in connection therewith. All fees, reimbursements, assessments, fines, bail forfeitures, and other funds collected or received pursuant to this chapter shall be deposited in this Fund and used for the administration and implementation of this chapter, including purchase of equipment, payment of personnel costs, training, contracts, and disposal of confiscated pesticides and devices

'50126. Severability. If any provision of this Chapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this Chapter and applicability thereof to other persons and circumstances shall not be affected.